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## CURRENT DECISIONS

CONSTITUTIONAL LAW—POLICE POWER AND EMINENT DOMAIN DISTINGUISHED.—An act of a legislature authorized the defendant counties jointly to improve a river separating the two to prevent floods. The result of straightening the channel was the erosion of the plaintiff's land. The plaintiff brought an action for damages. *Held*, that the defendant counties were not excused by virtue of the police power, the controlling purpose being the protection of the defendant's roads and bridges and not the public health, peace, morals, or welfare. *Conger v. Pierce County* (1921, Wash.) 198 Pac. 377.

In dealing with a difficult problem the court has reached a logical and just result. No satisfactory test has yet been found by the courts to determine when an injury to property constitutes a taking under eminent domain and when it is to be justified under the police power. For a discussion of these principles, see Freund, *Police Power* (1904) sec. 511-517.

CONSTITUTIONAL LAW—SEARCHES AND SEIZURES—FOURTH AND FIFTH AMENDMENTS NO PROTECTION FROM WRONGFUL ACTS OF INDIVIDUALS.—The plaintiff's private papers were stolen and turned over by the thief to the defendant, a government official. The plaintiff filed a petition asking for the return of these papers and for an injunction against their use as evidence. The trial court granted the petition and the defendant appealed. *Held*, that the order should be reversed as the Fourth and Fifth Amendments protected the individual only against the action of the Federal Government. *Burdeau v. McDowell* (1921) 41 Sup. Ct. 574.

Had the papers been taken by government agents the plaintiff would have been protected. See (1921) 30 YALE LAW JOURNAL, 769. But the court correctly points out that the Fourth and Fifth Amendments are no protection from the wrongful acts of private individuals. See *Weeks v. United States* (1914) 232 U. S. 383, 398, 34 Sup. Ct. 341, 346. The Constitution not being violated, it is no objection to the use of the evidence that it was illegally acquired. *Benson v. State* (1921, Ark.) 233 S. W. 758; *Briscoe v. State* (1921, Ark.) 233 S. W. 761.

CONTRACTS—ILLEGALITY OF SALE OF INTOXICATING LIQUORS.—The plaintiff purchased whiskey containing wood alcohol. Being blinded by drinking it, he sued the seller's administratrix for damages, alleging an implied warranty of wholesomeness. *Held*, that as a contract for the sale of whiskey is illegal, it can not be made the basis of a cause of action. *Harkins v. Provenzo* (1921, Sup. Ct.) 189 N. Y. Supp. 258.

The court relies on the general rule that an illegal contract will not be enforced. *Teachout v. Bogy* (1917) 175 Calif. 481, 166 Pac. 319. The unlawful act is the sale of liquor and it is said that the injury is caused by drinking it and not by its sale, an ingenious *non sequitur*. *Britton's Adm'r. v. Samuels* (1911) 143 Ky. 129, 136 S. W. 143. Even at common law a purchaser had no right to damages for injuries caused by his drinking liquor which had been sold to him. *Couchman v. Prother* (1904) 162 Ind. 250, 70 N. E. 240; *Buntin v. Hutton* (1917) 206 Ill. App. 194.

DAMAGES—BANKS AND BANKING—LIABILITY OF BANK TO FIDUCIARY FOR WRONGFUL DISHONOR OF CHECKS.—The defendant bank improperly dishonored a check drawn by the plaintiff upon a deposit standing in his name as treasurer of a church. *Held*, that the plaintiff was entitled to substantial damages, but temperate in amount. *De Launay v. Union Nat. Bank* (1921, S. C.) 107 S. E. 925.